

STATE OF MICHIGAN  
COURT OF APPEALS

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THOMAS SNOVER and NANCY SNOVER,

Plaintiffs-Appellees,

v

MENARD, INC.,

Defendant-Appellant.

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UNPUBLISHED

May 22, 2007

No. 270991

Bay Circuit Court

LC No. 05-003151-NO

Before: White, P.J., and Saad and Murray, JJ.

PER CURIAM.

Defendant appeals by leave granted from a circuit court order denying its motion for summary disposition in this premises liability action. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff Nancy Snover tripped over the edge of a merchandise display platform in defendant's store. The trial court ruled that the platform was open and obvious but there was an issue of fact whether the risk of harm it presented was open and obvious as well. The trial court's ruling on a motion for summary disposition is reviewed de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000).<sup>1</sup>

Premises liability rests on the duty an owner or occupier of land owes to those who enter to protect them from unreasonably dangerous conditions on the land. *Merritt v Nickelson*, 407 Mich 544, 552; 287 NW2d 178 (1980). This duty is not absolute. *Douglas v Elba, Inc*, 184 Mich App 160, 163; 457 NW2d 117 (1990). It does not extend to conditions from which an unreasonable risk of harm cannot be anticipated or to open and obvious dangers. *Id.*; *Hammack v Lutheran Social Services of Michigan*, 211 Mich App 1, 6; 535 NW2d 215 (1995).

An open and obvious danger is one that is known to the invitee or is so obvious that the invitee might reasonably be expected to discover it, i.e., it is something that an average user with ordinary intelligence would be able to discover upon casual inspection. *Riddle v McLouth Steel*

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<sup>1</sup> Our review is also limited to the trial court record as it existed at the time the motion was decided. *Peña v Ingham County Rd Comm*, 255 Mich App 299; 660 NW2d 351 (2003).

*Products Corp*, 440 Mich 85, 96; 485 NW2d 676 (1992); *Novotney v Burger King Corp (On Remand)*, 198 Mich App 470, 475; 499 NW2d 379 (1993). A landowner does not owe a duty to protect invitees from any harm presented by an open and obvious danger unless special aspects of the condition, i.e., something unusual about the character, location, or surrounding conditions, make the risk of harm unreasonable. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 614-617; 537 NW2d 185 (1995).

We agree with defendant that any risk of harm presented by the platform was open and obvious. The platform consists of a flat top resting on short risers. The top extends a few inches beyond the riser, creating a lip. Merchandise was stacked on top of the platform and set back several inches from the edges. The platform's color contrasted with that of the floor and the boxes of merchandise. Because the protruding edges of the platform's top were not obscured from view and readily apparent to a person walking in the aisle, the risk of harm they presented was open and obvious. Because the platform created a risk of harm solely because plaintiff failed to notice it, and there is no evidence that she could not have discovered it and realized its danger, defendant cannot be held liable. *Bertrand, supra* at 611.

Reversed.

/s/ Helene N. White  
/s/ Henry William Saad  
/s/ Christopher M. Murray